

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LINDA KARGES,

06-CV-0348E(Sc)

Plaintiff,

-vs-

ORDER

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

WHEREAS the Complaint herein was filed on May 25, 2006 (Dkt. #1) and the plaintiff was subsequently ordered to file proof of exhaustion of administrative remedies (Dkt. #4) which she did on July 10, 2006 (Dkt. #6); and

WHEREAS, after referral of the proceedings to the Magistrate Judge, a scheduling order was issued requiring that the defendant file an answer by March 2, 2007 (Dkt. #7). However, although a summons was issued as to the defendant on August 2, 2006, it was never served; and

WHEREAS on February 2, 2007 the Magistrate Judge issued an Order to Show Cause as to why the case should not be dismissed for failure to effect service of process and affixed February 15, 2007 as the deadline date to respond (Dkt. #10); and

WHEREAS plaintiff did not respond to the Order to Show Cause and on February 26, 2007, the Magistrate Judge issued a Report and Recommendation,

recommending that the case be dismissed for failure to effectuate service of process (Dkt. #11); and

WHEREAS plaintiff has filed Objections to this Report and Recommendation which does not dispute any of the findings therein and merely seeks an extension of time to serve the complaint (Dkt. #12). Plaintiff provides no reason as to why service of process was not effectuated in the 208 days between the issuing of the summons and the filing of the Order to Show Cause and only offers law office failure as an excuse as to why the Order to Show cause was not responded to; and

WHEREAS plaintiff has clearly failed to show cause as to why she failed to effect service of process within the time limits specified by Rule 4(m) the Federal Rules of Civil Procedure and has not disputed any of the Magistrate Judge's findings with respect to this, it is therefore accordingly

ORDERED that the Magistrate Judge's Report and Recommendation is hereby adopted and this action is dismissed without prejudice.

DATED: Buffalo, N.Y.

March 16, 2007

/s/ John T. Elfvin

JOHN T. ELFVIN
S.U.S.D.J.